

MYRON CORP.,

Plaintiff,

v.

HOLLAND USA, INC. D/B/A  
AMSTERDAM PRINTING,

Defendant.

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**FOR PRELIMINARY INJUNCTION**

151

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3. I received a Bachelor of Arts degree from the American University in Paris and a Masters degree in Business Administration from ENPC, a school in Paris. Based on my education and experience, I am knowledgeable about direct marketing and advertising specialty products.

4. Myron is a leading direct seller of promotional products and personalized business gifts, such as calendars, pens, calculators and key rings. Myron generates sales through various direct marketing vehicles, which include product sample mailings, its printed catalog that it circulates through the mail, its website and a telephone sales team. Attached hereto as Exhibit 1 is a copy of a Myron 2007-2008 catalog, which depicts many but not all of Myron's products, including several pages featuring calendars.

5. In addition to advertising and offering its products for sale through its own catalog and website, Myron actively solicits new customers and orders by prospecting, which is the industry term for unsolicited mailings to potential customers. Myron typically mails a product sample, such as a calendar, to a potential customer, often with the customer's name printed on the product. This way, the customer can see how the final product will look, and hopefully, the potential customer will place an order for the promotional product. Myron frequently engages in prospecting, and it is a critical component of its success.

6. When Myron mails products to prospects, it sends a sample of the actual product. For example, if Myron sends a calendar to a prospect, the calendar is identical to the calendar that the prospect would order. The sample will have the customer's name and address imprinted on the front cover, although should the customer wish to vary the display or have its logo imprinted, too, Myron has the capacity to offer these variations. The minimum calendar order is fifty units, and the average order is typically well above the minimum. In addition to an

order from a new customer, Myron also receives repeat orders from existing customers. After Myron's customer receives the calendars, he or she usually offers them to clients as a gift and, more importantly, as a year-long reminder of the existing relationship between the customer and his or her clients.

7. Calendars, as dated products with a finite end to their usefulness, yield a high rate of repeat business, which is vital to the continued success of Myron.

8. Myron offers a limited variety of calendar designs in two size formats. Our pocket calendar, which literally fits into a jacket pocket, is sold under the registered trademark POCKET PAL. The larger sized format, approximately 7 by 10 inches is sold under the registered trademark DATE LOG. The POCKET PAL and DATE LOG calendars both come in weekly and monthly formats.

9. Calendars are fairly standardized products. Since there is little room for variation on the inside of a calendar, the primary means for differentiating our dated products and generating customer interest are through the use of attractive designs and compelling trademarks on the covers.

10. At least as early as 1995, Myron introduced a new calendar cover featuring a distinctive mountain climbing motif bearing the word TEAMWORK and the phrase TOGETHER WE ACHIEVE THE EXTRAORDINARY. A true and accurate depiction of the cover of Myron's 1995 catalog and the pertinent page showing the calendar is attached as Exhibit 2.

11. Myron later began the process of tweaking the design of the mountain climbers. True and accurate printouts of Myron's artwork for its mountain climbers design is attached as Exhibit 3. The design was completed in 1998 and appeared for the first time in

Myron's printed catalog in the Autumn of 1998. A true and accurate depiction of the cover of Myron's Autumn 1998 catalog and the pertinent page showing the calendar is attached as Exhibit 4. In fact, each of Myron's catalogs since 1995 have continuously included the words TEAMWORK and TOGETHER WE ACHIEVE THE EXTRAORDINARY and two mountain climbers (collectively referred to herein as the "Myron Trade Dress"). Attached hereto as Exhibit 5 is a sample calendar featuring the Myron Trade Dress.

12. Since 1995, Myron has continuously used its Trade Dress on and in connection with the manufacture and sale in interstate commerce of high-quality, personalized business products, including calendars and diaries. Currently, Myron has approximately thirty SKUs featuring the Myron Trade Dress. Attached hereto as Exhibit 6 are copies of photographs of products bearing the Myron Trade Dress.

13. Between 2002 and 2006, Myron distributed millions of calendars to prospective and actual customers featuring its Trade Dress, at a cost of more than \$19 million. True and accurate copies of sample mailings to prospective and actual customers are attached hereto as Exhibit 7.

14. Since 2002, Myron also has expended another \$153,000 to advertise and promote its products bearing its Trade Dress. This figure represents Myron's proportional cost of catalog production and distribution directly attributable to products featuring its Trade Dress. Thus, total advertising and promotional expenditures between 2002 and 2006 were in excess of \$19 million. A summary of Myron's advertising expenditures between 2002 and 2006 is attached as Exhibit 8.

15. Since 1998, Myron has sold more than 38 million units of dated products featuring its Trade Dress. During that same time period, Myron earned revenues exceeding \$77 million from the sale of all such goods.

16. Sometime after June 18, 2007, I became aware that defendant Amsterdam had recently introduced a new line of calendars bearing the TEAMWORK name. One of my colleagues, Michael Probert, the Manager of Product Development, informed Myron management soon after he had received a sample calendar from Amsterdam that used TEAMWORK TOGETHER WE CAN ACHIEVE THE IMPOSSIBLE on a pocket calendar. That calendar featured a design of flying geese in a V-formation. A true and accurate depiction of the sample is attached as Exhibit 9.

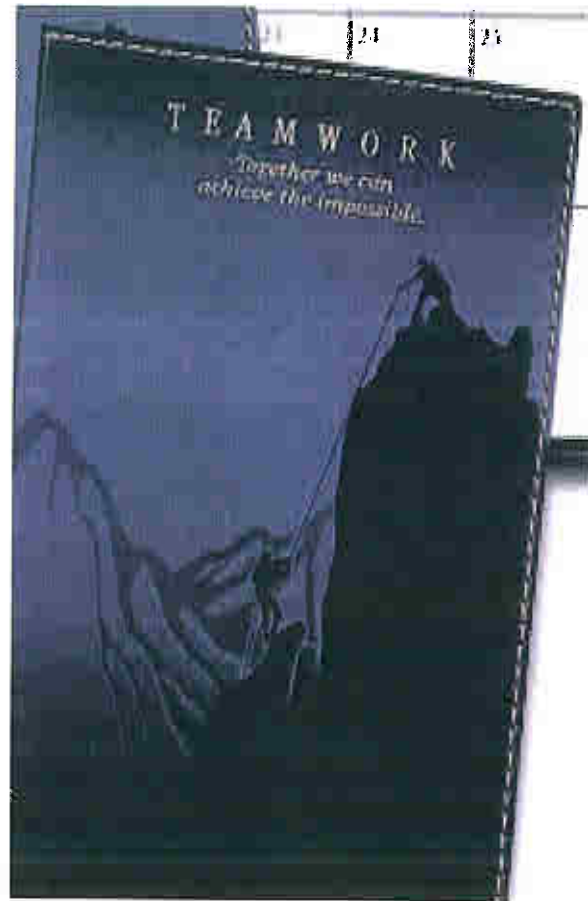
17. Thereafter, Myron learned that Amsterdam, as well as its sister company Union Pen, were advertising and selling pocket calendars bearing the words TEAMWORK TOGETHER WE CAN ACHIEVE THE IMPOSSIBLE along with a design depicting two silhouetted mountain climbers, which Amsterdam calls "Achieve Teamwork". I actually received a catalog from Amsterdam offering this calendar design on or about July 13, 2007. Attached hereto as Exhibit 10 is a depiction of the Amsterdam Summer 2007 catalog and pertinent page showing the "Achieve Teamwork" calendar design. Amsterdam's products are virtually identical to the calendars, diaries and planners that Myron sells. Amsterdam's "Achieve Teamwork" products also feature on the front cover a slogan – TOGETHER WE CAN ACHIEVE THE IMPOSSIBLE – that is virtually identical to Myron's TOGETHER WE ACHIEVE THE EXTRAORDINARY registered trademark. In addition, Amsterdam's products literally copy the overall Trade Dress of Myron's calendars, including the artwork depicting two

silhouetted mountain climbers ascending a peak. The substantial similarities between Amsterdam's and Myron's products are striking.

18. In my opinion, customers are likely to be confused or deceived into believing that Amsterdam and its calendar products are somehow connected or associated with Myron and its products that use the same Trade Dress. Amsterdam invites the confusion by closely mimicking the overall presentation of Myron's Trade Dress on identical goods nearly slavishly, as the following images of the parties' products demonstrate:



**Myron's Calendar**



**Amsterdam's Calendar**

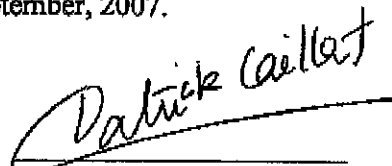
19. As long as Amsterdam is permitted to advertise and sell its infringing calendars, Myron is likely to lose not only prospective business, but also repeat business with respect to its TEAMWORK calendars. Amsterdam has misappropriated one of Myron's most

successful and best selling calendars, misappropriating the very names and design by which Myron conducts business and through which customers know Myron's products.

20. Myron also is in need of immediate injunctive relief because its peak selling season is drawing to a close. If relief is denied until after October, the harm Myron will suffer will be irreparable.

21. As a result of Amsterdam's deliberate and intentional acts, Myron has lost all control over its Trade Dress. Because of the standard format and size of calendars, customers will mistakenly believe and be confused into believing that Amsterdam and its infringing calendars are associated with or connected to Myron. As a result, Myron has suffered ~ and will continue to suffer until abated – extreme harm to its goodwill.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 24<sup>th</sup> day of September, 2007.

  
Patrick Caillat

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing "Declaration of Patrick Caillat in Support of Plaintiff's Motion for Preliminary Injunction" has been served by email on defendant's attorney, Mario Aieta, Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, New York 10017, on this 24<sup>th</sup> day of September, 2007.

A handwritten signature in blue ink, reading "Katherine M. McGowan", is written over a horizontal line.



# EXHIBIT

# 1

# Myron

We've Got the Gift  
for Building Business™



"It's got to be perfect.  
It has your name on it  
and our name behind it."

*Mike Adler*

Mike Adler  
Owner and Founder



"We are a very small  
company and have to  
make our promotional  
budget work hard for  
us. Myron gives us  
great value and quality  
for our money."



"The quality and fine  
craftsmanship are in  
perfect harmony with the  
image of my company  
and the quality that my  
clients have come to  
expect from things that  
bear our name."



*Thank  
You!*



"When I hand a prospect  
a personalized gift instead  
of a business card, they  
are immediately grateful.  
It creates a fantastic first  
impression."



www.myron.com

call 1-800-526-9766

fax 1-800-646-1443





## Every Personalized Gift We Deliver Shows Our Commitment To You And Your Customers



*...because they're exactly what YOU asked for.*

You told us you wanted more ideas to get more responses, more handshakes, more signatures, more money. We answered with a wide selection of new and classic business gifts, from entertaining giveaways to refined executive gifts, all professionally personalized.



*...because we bring YOU more expertise.*

Our worldwide Product Development and Quality Assurance teams have set up more than 110 rigorous quality assurance tests to monitor every stage of product development, from design to personalization. We've been in the personalization business for 58 years.

Our account managers are trained specialists who know how to find solutions and get results for any type of enterprise. Your gifts will always make a great first and lasting impression.



*...because we offer YOU more tools for success.*

New colors, new designs, new materials—all results-oriented products—join our proven performers. All the gifts you need to succeed in one convenient place. So connect with your customers and improve employee relationships.



*If you want to get personal, you've come to the right place. You can always depend on Myron for quality, value and on-time delivery. For added impact count on our skilled design team to incorporate your logo and message into an especially effective sales tool. At Myron, your satisfaction is always 100% guaranteed. We thank you for being a valued customer.*

James Adler C.E.O.



### Myron 100% Satisfaction Guarantee

If for any reason you are not 100% satisfied with your order, simply return it for a full refund or replacement.

## Byron

You'll never be without one again.  
Compact and easy to carry.



### A. Byron Pen

Compact and attractive. Brass cap fits over barrel and becomes a full-size ballpoint pen. Features EVA foam grip and premium ink refill. Available in purple or blue with chrome appointments and gunmetal with gold-plated appointments.

Specify Blue "A" or Black "B" ink

Purple/Chrome XS7-WC97627A/B

Blue/Chrome XS7-WC59401A/B

50 min.	100	250	500	1000
\$3.14	\$2.89	\$2.79	\$2.69	\$2.49

2 lines/25 characters per line

Gunmetal/Gold XS7-WD05145A/B

50 min.	100	250	500	1000
\$3.36	\$3.09	\$2.90	\$2.79	\$2.59

Imprint area: 1/5" x 1 1/2"

*"We have utilized Myron products, primarily desk diaries and pens, for more years than I can remember. My customers continue to tell me that the pens we give them are among the best they have ever tried. In this era of PDAs and computers we still have many customers who look forward to our Christmas gift of a Myron desk diary. I would recommend Myron products to anyone."*

— John Hardwick  
President  
First Arkansas Mortgage Company

*"We are extremely happy with the quality of your personalized pens. When we run into our clients they usually have our pens with them which is a testament to the usefulness of including personalized gifts as part of our marketing promotions."*

— Amy Miller  
Ugly Data Inc.  
www.uglydatainc.com

### CONTENTS

Ergonomic & Slim Pens pages 3-11

Exclusive Rollerball & Pen Sets pages 12-15

Specialty Pens & Office Tools pages 16-21

Clocks & Calculators pages 22-23

Gift Boxes & Extras pages 24-25

Pocket Diaries pages 28-39

Desk Master® Diaries pages 40-41

Date Log® Monthly Diaries pages 42-45

Notepads & Pocket Tools pages 46-51



**For added *IMPACT*,  
personalize with a  
call to *ACTION*!**

It's important that your audience receives what advertising professionals refer to as a *call to action*—something that tells them what you want them to do—whether that's to make an appointment, redeem a coupon, make a donation, or call for a free estimate. At Myron, we say products with *call to action* imprints *have legs*, meaning they keep going, doing your promotional work for you just by being in the right hands and saying the right thing, over and over again.

**Your goal:**

I want to bring in more new customers

**Myron solution:**

Use multiple imprint locations to communicate your message. In addition to the primary imprint area most products can be personalized on two or more locations.



**Side 1:**

Tell them where and how to contact you—address and phone number



**Side 2:**

Make your business and brand visible—include your logo



**Side 3:**

Don't forget to tell them about special offers and the advantage of doing business with your company.

Talk to your account manager for more information about personalization. Start getting your gifts working overtime today.

**Stratas SCG**



NEW silicone  
comfort grip

**A: Stratas SCG**

To get attention, make a bold statement. Give your VIP's the height of elegance and the latest in comfort. Sleek gunmetal with gleaming chrome appointments and our new silicone comfort grip. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" Ink

Gunmetal/Chrome XS7-WD01993A/B

50 min.	100	250	500	1000
\$3.65	\$3.29	\$3.15	\$2.99	\$2.79

2 lines/29 characters per line

Imprint area: 1/8" x 1 1/4"



## Stratas Classic

Ergonomic Ballpoint Pens



black/gold



claret/gold



signature clip

teal/gold

### B. Stratas Classic

Link your company's name to dynamic shape and performance. Three-sided barrel is easy to grip, lies flat on a desk and shows off streamlined goldtone detailing and your laser-engraved name. One-hand plunger. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" ink

Teal/Gold XS7-WC26150B

Black/Gold XS7-WC28903A/B

Claret/Gold XS7-WB95206A/B

50 min.	100	250	500	1000
\$3.52	\$3.19	\$3.05	\$2.88	\$2.69

2 lines/29 characters per line

Imprint area: 1/8" x 1 5/8"

## Stratas II

### C. Stratas II

A customer favorite, now with color-coordinated rubberized grips. Plunger action for one-hand convenience. Brass body with a quality metal ink refill. You'll get a stunning pen that packs a whole lot of information to meet your needs.

Specify Blue "A" or Black "B" ink

Purple/Chrome XS7-WC94927A/B

Claret/Gold XS7-WC30146A/B

Blue/Gold XS7-WC30201A/B

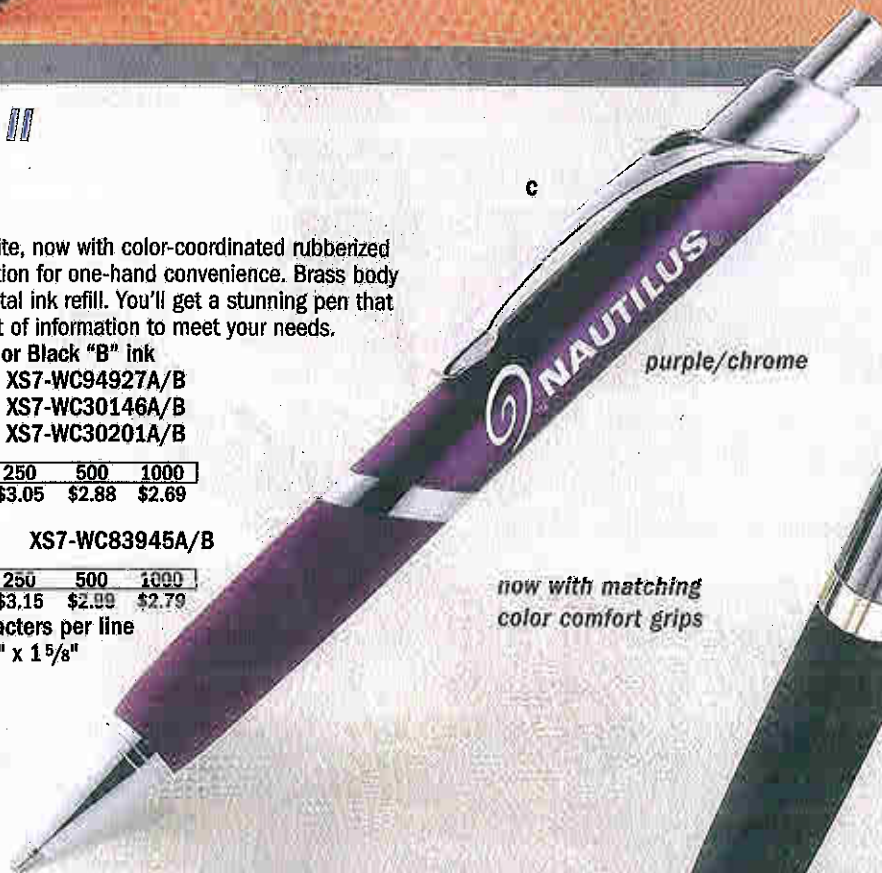
50 min.	100	250	500	1000
\$3.52	\$3.19	\$3.05	\$2.88	\$2.69

Gunmetal/Gold XS7-WC83945A/B

50 min.	100	250	500	1000
\$3.65	\$3.29	\$3.15	\$2.99	\$2.79

2 lines/29 characters per line

Imprint area: 1/8" x 1 5/8"



purple/chrome

now with matching  
color comfort grips



gunmetal/gold



claret/gold



blue/gold

Caillat Decl., Ex. 1  
Page 5 of 52



**A. Val D'or II Pen**

Supersize clients with a most prolific writer. It's big on comfort and convenience. One-hand click-action ballpoint feels light and balanced. Rubberized non-slip comfort grip. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" Ink  
 Blue/Chrome XS7-WC96701A/B  
 Gunmetal/Gold XS7-WC97045A/B

50 min.	100	250	500	1000
\$3.59	\$3.29	\$3.15	\$2.99	\$2.69

2 lines/32 characters per line

Imprint area:  $\frac{1}{5}$ " x  $1\frac{7}{8}$ "

**B. Bergamo II Pen**

A stunning example of how we listen to our customers. We streamlined the grip and coated it with a smooth non-slip rubberized finish and lavished it with costly gunmetal and gold accents. One-hand plunger convenience. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" Ink  
 Gunmetal/Gold XS7-WC91945A/B

50 min.	100	250	500	1000
\$3.59	\$3.29	\$3.15	\$2.99	\$2.69

2 lines/35 characters per line

Imprint area:  $\frac{1}{5}$ " x  $1\frac{3}{4}$ "

**C. Val D'or Pen**

Keep in touch with valued clients by sending our brilliant combination of comfort and elegance. They'll admire your style and generosity. Rubberized non-slip comfort grip, stands out on a bright metallic mix of gunmetal and gold-plated appointments. Twist action ballpoint. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" Ink  
 Gunmetal/Gold XS7-WC88745A/B

50 min.	100	250	500	1000
\$3.59	\$3.29	\$3.15	\$2.99	\$2.69

2 lines/32 characters per line

Imprint area:  $\frac{1}{5}$ " x  $1\frac{7}{8}$ "



Many items in this catalog are imprinted with custom artwork, ask your account manager for details.

**D. Bel Mondo Pens**

How can the best get better? By listening to your customers. We have, and at their request, added a decorative band. Designed exclusively for Myron to enhance this best selling pen's striking appearance. With a perfectly balanced hourglass shape, smooth writing and plunger action convenience, it's sure to become your customer's favorite. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" ink

Blue/Chrome XS7-WC30401A/B

Rosé/Chrome XS7-WC82846A/B

Red/Gold XS7-WC96504A/B

Hunter Green/Gold XS7-WC84302A/B

50 min.	100	250	500	1000
\$3.59	\$3.29	\$3.15	\$2.99	\$2.69

Gunmetal/Gold XS7-WC84445A/B

50 min.	100	250	500	1000
\$3.89	\$3.49	\$3.34	\$3.19	\$2.99

3 lines/35 characters per line

Imprint area: 1/5" x 2 1/8"

**E. Coronado Pens**

Project a highly professional image with this sleek one-hand plunger ballpoint. Choice of four lustrous finishes laser-engraved to reveal polished brass. Soft hourglass grip, curved clip. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" ink

Claret/Gold XS7-WA80746A/B

Claret/Chrome XS7-WA39046A/B

Blue/Chrome XS7-WA38001A/B

50 min.	100	250	500	1000
\$3.89	\$3.49	\$3.32	\$3.17	\$2.99

Gunmetal/Gold XS7-WC75045A/B

50 min.	100	250	500	1000
\$3.99	\$3.59	\$3.44	\$3.25	\$2.99

2 lines/30 characters per line

Imprint area: 1/5" x 1 5/8"

**Coronado**

claret/chrome

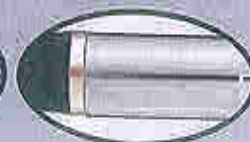
METRO REMODELING  
461-555-2579



claret/gold



blue/chrome



gunmetal/gold



With a unique hourglass shape, comfort grip, large selection of colors and finishes, it's hard to pick just one. What all Bel Arte pens have in common is that people enjoy writing with them. So when you give Bel Arte pens to clients, prospects, and associates they will be used and appreciated for a long time. Don't be surprised when your pen is noticed in meetings and commented upon favorably by all.

#### A. Bel Arte Silver Plated Pens

Wow your clients with this special edition Bel Arte pen. The translucent finish in bright red or green is dramatically enhanced by genuine silver plated appointments, making it an extra special gift pen. One-hand plunger convenience. Brass body with a quality metal ink refill.

Specify Blue "A" or Black "B" ink  
 Green/Silver XS7-WC97302B  
 Red/Silver XS7-WC81804A/B

50 min.	100	250	500	1000
\$3.99	\$3.69	\$3.44	\$3.25	\$2.99

3 lines/35 characters per line

Imprint area: 1/5" x 2 1/8"



Stand out from the competition with genuine silver plated appointments

Many items in this catalog are imprinted with custom artwork. Ask your account manager for details.

#### B. Bel Arte Letter Openers

Designed exclusively for Myron, the Bel Arte companion letter opener. Crafted to the same high quality standards as our pens.

Blue/Chrome	XS7-TD77401
Green/Gold	XS7-TD78502
Blue/Gold	XS7-TD65301
Rosé/Chrome	XS7-TD77606

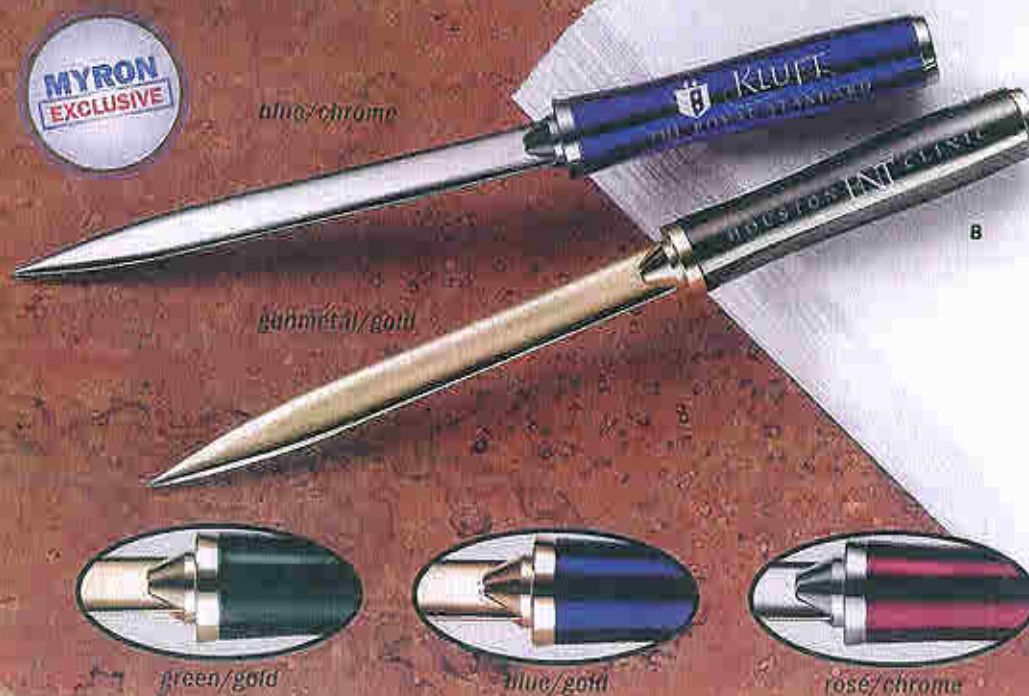
50 min.	100	250	500	1000
\$3.79	\$3.49	\$3.39	\$3.29	\$3.19

Gunmetal/Gold	XS7-TD77845
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50 min.	100	250	500	1000
\$3.99	\$3.79	\$3.69	\$3.59	\$3.49

2 lines/30 characters per line

Imprint area: 1/5" x 1 3/4"







black/chrome



claret/gold



ice blue/chrome



claret/chrome



hunter green/gold



red/gold



hunter green/chrome



blue/chrome



rosé/chrome



gunmetal/gold



brown/gold

aspen green/chrome

**C. Bel Arte Pens**

Make the best impression with this classic customer favorite. Hourglass shape combines a slip-resistant grip, enamel finish with gold or chrome accents. One-hand plunger convenience. Brass body with a quality metal ink refill. Available in 12 great colors.

Specify Blue "A" or Black "B" Ink

Brown/Gold	XS7-WD01505A/B
Aspen Green/Chrome	XS7-WD04102A/B
Black/Chrome	XS7-WC74903A/B
Claret/Gold	XS7-WC60746B
Ice Blue/Chrome	XS7-WD04901A/B
Claret/Chrome	XS7-WC42046A/B
Hunter Green/Gold	XS7-WC85102A/B
Red/Gold	XS7-WC81904A/B
Hunter Green/Chrome	XS7-WC60502A/B
Blue/Chrome	XS7-WC70801A/B
Rosé/Chrome	XS7-WC74846A/B

Gunmetal/Gold XS7-WC62545A/B

50 min.	100	250	500	1000
\$3.59	\$3.29	\$3.15	\$2.99	\$2.69

3 lines/35 characters per line

Imprint area: 1/5" x 2 1/8"

50 min.	100	250	500	1000
\$3.36	\$3.09	\$2.90	\$2.79	\$2.59

3 lines/35 characters per line

Imprint area: 1/5" x 2 1/8"

Caillat Decl., Ex. 1  
Page 9 of 52

**Baron****A**

claret/gold

blue/gold

gunmetal/gold

**A. Baron Pens**

Our illustrious Baron series is famous for building valued relationships. Three stunning finishes comprise our aristocratic family of twist-action ballpoint pens. All brass with goldtone appointments and your laser-perfect imprint on the barrel with optional personalization on the cap.

Specify Blue "A" or Black "B" ink

Blue/Gold XS7-1164601A/B

Claret/Gold XS7-WA00446A/B

50 min.	100	250	500	1000
\$4.18	\$3.79	\$3.59	\$3.49	\$3.19

Gunmetal/Gold XS7-1176645A/B

50 min.	100	250	500	1000
\$5.51	\$4.99	\$4.26	\$4.12	\$3.99

Barrel:

2 lines/27 characters per line

Imprint area:  $\frac{1}{5}$ " x  $1\frac{5}{8}$ "

Cap (optional):

2 lines/23 characters per line

Imprint area:  $\frac{1}{5}$ " x  $1\frac{1}{4}$ "**Biscay****B**

gunmetal/gold

**B. Biscay**

Ergonomically designed, sculpted ribbenzed grip makes this a writer's favorite. Stunning gold-plated appointments and a quality metal ink refill.

Specify Blue "A" or Black "B" ink

Gunmetal/Gold XS7-WC91145A/B

50 min.	100	250	500	1000
\$3.59	\$3.29	\$3.15	\$2.99	\$2.69

2 lines/35 characters per line

Imprint area:  $\frac{1}{5}$ " x  $1\frac{3}{4}$ "**Pegasus****C**

blue/gold

claret/gold

**C. Pegasus**

We'll laser-engrave this sleek, one-piece barrel with up to 3 lines of up to 50 characters each. Built-in quality and comfort grip keeps it there for a long-lasting impression. Twist-action ballpoint with quality ink metal refill.

Specify Blue "A" or Black "B" ink

Claret/Gold XS7-WA03846A/B

Blue/Gold XS7-1173401A/B

50 min.	100	250	500	1000
\$3.68	\$3.29	\$2.93	\$2.76	\$2.65

3 lines/50 characters per line

Imprint area:  $\frac{1}{5}$ " x  $2\frac{1}{4}$ "